

10-27-1999

Form PTO-1!
(Rev. 6-93)

101183300

ION FORM COVER SHEET
ADEMARKS ONLYU.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
OotieWorks Software, Inc.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership

☒ Corporation-State: **California**☐ OtherAdditional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☒ Change of Name
☐ Other

Execution Date: **June 25, 1999**

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/681,230

2. Name and address of receiving party(ies):

Name: **Evite, Inc.**

Internal Address:

Street Address: **60 East Third Avenue, Suite 210**City: **San Mateo** State: **California** ZIP: **94401**☐ Individual(s) citizenship☐ Association☐ General Partnership☐ Limited Partnership☒ Corporation-State: **California**☐ OtherIf assignee is not domiciled in the United States, a domestic
representative designation is attached:☐ Yes ☐ No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?

☐ Yes ☒ No

B. Trademark Registration No.:

Additional numbers attached? ☐ Yes ☒ No

10-19-1999

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

5. Name and address of party to whom correspondence concerning
document should be mailed:Name: **Catherine H. Tran**Internal Address: **Perkins Coie LLP**Street Address: **1201 Third Avenue, Suite 4800**City: **Seattle** State: **WA** ZIP: **98101**

6. Total number of applications

7. Total fee (37 CFR 3.41):.....\$ **40.00**☐ Enclosed☐ Authorized to be charged to deposit account☒ Charge any additional fees/credit any overpayment to
Deposit Account No. 50-0665

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Catherine H. Tran

Signature

10/19/99

Date

Total number of pages comprising cover sheet, attachments and document: **14**

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Mail documents to be recorded with required cover sheet information to:

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Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

10527482

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF
OOTLEWORKS SOFTWARE, INC.ENDORSED-FILED
In the office of the Secretary of State
of the State of California

JUN 25 1999

Adam Lieb certifies that:

BILL JONES, Secretary of State

A. He is the President and Secretary of OOTLEWORKS SOFTWARE, INC., a California corporation (the "Corporation");

B. The articles of incorporation of this Corporation are amended and restated in their entirety to read as follows:

I

The name of this Corporation shall be "EVITE, INC."

II

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

This Corporation is authorized to issue two classes of shares, to be designated Common Shares, no par value ("Common Shares"), and Preferred Shares, no par value ("Preferred Shares"), respectively. This Corporation is authorized to issue 12,000,000 shares of Common Shares and 3,737,985 shares of Preferred Shares, which Preferred Shares may be issued in one or more series.

IV

1. Designation of Preferred Shares. There is hereby provided one series of Preferred Shares designated and to be known as "Series A Preferred", and one series of Preferred Shares designated and to be known as "Series B Preferred".

2. Number of Shares. The number of shares constituting the Series A Preferred shall be 605,985, and the number of shares constituting the Series B Preferred shall be 3,132,000.

3. Rights, Preferences, Privileges and Restrictions. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Shares are as follows:

3.1 Dividends.

(a) Definition of Distribution. For the purposes of this Section 3.1, unless the context otherwise requires, "distribution" means the transfer of cash or property without consideration, whether by way of dividend or otherwise, or the purchase or redemption of shares of this Corporation (other than repurchases of Common Shares held by current or former directors, employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase, or redemption by a subsidiary of the Corporation.

(b) Preference. The holders of record of the Preferred Shares shall be entitled to receive cash dividends at an annual rate of ten percent (10%) of the Preferred Share Liquidation Preference established in Section 3.2(a) below, such dividends to be payable only when, as and if declared by the Board of Directors out of funds legally available therefor. No dividends or other distributions shall be made with respect to Common Shares, until all dividends on the Preferred Shares have been paid or set apart. The right to such dividends on Preferred Shares shall not be cumulative; and no rights to such dividends shall accrue to holders of Preferred Shares by reason of the fact that dividends on said shares are not declared in any year. The holders of Preferred Shares shall have no priority or preference with respect to distributions made by the Corporation in connection with the repurchase of Common Shares issued to or held by employees, directors, independent contractors or consultants upon termination of their employment or services pursuant to agreements providing for the right of said repurchase between the Corporation and such persons. After the holders of the Preferred Shares have received their dividend preference as set forth above, any additional dividends or distributions declared by the Board of Directors out of funds legally available thereto shall be distributed among all holders of Common Shares, together with holders of Preferred Shares, *pari passu*, in proportion to the number of Common Shares which would have been held by each such holder if all Preferred Shares were converted into Common Shares at the then effective Conversion Rate (as defined in Section 3.4 below).

3.2 Preference on Liquidation.

(a) Preference. In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation distributions to the holders of Common Shares and Preferred Shares shall be made as follows:

(i) The holders of the Preferred Shares then outstanding shall be entitled to be paid, *pro rata*, out of the assets of the Corporation available for distribution to its shareholders, whether from capital, surplus, or earnings, before any payment shall be made in respect of the Corporation's Common Shares, a payment (the "Preferred Share Liquidation Payment") in an

amount equal to \$0.13 for each share of Series A Preferred and \$2.50 for each share of Series B Preferred, plus all respective declared and unpaid dividends thereon to the date fixed for distribution, as adjusted to reflect any stock splits, stock dividends, or other recapitalizations.

If upon liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of the Preferred Shares the full amounts to which they shall be entitled as set forth above, the holders of the Preferred Shares shall receive a proportionate percentage pro rata distribution of assets according to the amounts which would be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full. After setting apart or paying in full the preferential amounts due the holders of the Preferred Shares, the remaining assets of the Corporation available for distribution to shareholders, if any, shall be distributed to the holders of Common Shares.

(b) Deemed Liquidations, Dissolutions. The merger or consolidation of the Corporation into or with any other corporation or corporations in which the shareholders of this Corporation shall own less than a majority of the voting securities of the surviving corporation, or the sale, transfer, or lease (but not including a transfer or lease by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution, or winding up of the Corporation as those terms are used in this Section 3.2.

3.3 Voting.

(a) Except as required by law or as otherwise set forth herein, the Preferred Shares shall be voted together, and not separately as a class, with the Corporation's Common Shares at any annual or special meeting of the shareholders of the Corporation, or may act by written consent in the same manner as the Corporation's Common Shares. Each holder of Preferred Shares shall be entitled to such number of votes equal to the whole number of Common Shares of the Corporation into which the holder's Preferred Shares are convertible immediately after the close of business on the record date fixed for such meeting, or, if no record date is established, at the date such vote is taken, or on the effective date of any such written consent.

(b) The Board of Directors shall consist of five (5) members. Except as provided below, one director (the "Series B Preferred Director") shall be elected by the holders of the Series B Preferred, voting together as a class, two (2) directors (the "Series A/Common Directors"), shall be elected by the holders of the Series A Preferred and the Common Shares, voting together as a class, and two (2) directors (the "Joint Directors") shall be elected jointly by the holders of Common Shares and Preferred Shares, voting together as a class. If at any time fewer than 1,000,000 shares (as adjusted for stock dividends, combinations and splits) of Series B Preferred (or Common Shares issued upon conversion thereof) remain outstanding, the right of separate classes to elect directors will terminate, and all directors will thereafter be subject to election or removal by the holders of the Common Shares and the Preferred Shares, voting together as a class.

A vacancy in the office of the Series B Preferred Director may be filled by the affirmative vote or written consent of the holders of a majority of the shares of Series B Preferred, acting as a single class. A vacancy in the office of a Series A/Common Director may be filled by the vote of the remaining Series A/Common Director or by the affirmative vote or written consent of the holders of a majority of the Series A Preferred and the Common Shares, voting together as a class. A vacancy in the office of a Joint Director may be filled by the affirmative vote or written consent of the holders of a majority of the Common Shares and Preferred Shares, voting together as a class. Any Series B Preferred Director, Series A/Common Director or Joint Director may be removed during the term of office, whether with or without cause, only by the affirmative vote of the holders of the class of stock entitled to elect such director, as provided in Section 3.3(b) above. The corporation shall promptly give each holder of Preferred Shares and each holder of Common Shares written notice of any election to or appointment of or change in composition of the Board of Directors.

3.4 Conversion Rights. The holders of Preferred Shares shall have conversion rights as follows:

(a) Preferred Shares Right to Convert. Each Preferred Share shall be convertible into fully paid and nonassessable Common Shares of the Corporation, at the option of the holder thereof at any time after the date of issuance of such share, exercised by delivery of a written notice to the Secretary of the Corporation. The number of Common Shares into which each share of Series A Preferred Share (the "Series A Conversion Rate") may be converted shall be determined by dividing \$.13 by the Series A Per Share Conversion Price in effect at the time of the conversion, and the number of Common Shares into which each share of Series B Preferred (the "Series B Conversion Rate") may be converted shall be determined by dividing \$2.50 by the Series B Per Share Conversion Price in effect at the time of the conversion. The "Series A Per Share Conversion Price" per share at which Common Shares shall be issuable upon conversion of any Series A Preferred Shares shall initially be \$0.13, and shall be subject to adjustment as provided herein. The "Series B Per Share Conversion Price" per share at which Common Shares shall be issuable upon conversion of any Series B Preferred Shares shall initially be \$2.50, and shall be subject to adjustment as provided herein. As used herein, the term "Conversion Price", without designation, shall refer to the respective conversion price for each series of Preferred Shares. The term "Conversion Rate", without designation, shall refer to the respective conversion rate for each series of Preferred Shares.

(b) Automatic Conversion. The Preferred Shares shall automatically be converted into Common Shares in the manner and ratio provided as follows:

(i) Each Preferred Share shall be automatically converted upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Shares for the account of the Corporation to the public and resulting in aggregate gross offering proceeds to the Corporation (before expenses, discounts or commissions) of at least \$15,000,000. In the event of

such an offering, the persons(s) entitled to receive the Common Shares issuable upon such conversion of Preferred Shares shall not be deemed to have converted until immediately prior to the closing of such public offering, at which time the Preferred Shares shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such Preferred Shares being converted are either delivered to the Corporation or its transfer agent, as hereinafter provided, or the holder notifies the Corporation or any transfer agent, as hereinafter provided, that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

(ii) Each Preferred Share shall be automatically converted upon the election of the holders, voting as a single class, of more than fifty percent (50%) of the aggregate number of outstanding Preferred Shares to convert into Common Shares in the manner and ratio provided herein.

(c) Mechanics of Conversion. Before any holder of Preferred Shares shall be entitled to convert the same into Common Shares, such holder shall surrender the certificate or certificates therefor, duly endorsed in blank or accompanied by proper instruments of transfer, at the office of the Corporation's Secretary, and shall give written notice to the Corporation at such office that such holder elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to subsection 3.4(b) above) and shall state in writing therein the name or names in which such holder wishes the certificate or certificates for Common Shares to be issued. The Corporation, as soon as practicable thereafter, shall issue and deliver at such office to such holder or to the holder's nominee, certificates for the full number of Common Shares to which such holder shall be entitled. Such conversion shall be deemed to have been made as of the date of such surrender of the Preferred Shares to be converted (except that in the case of an automatic conversion pursuant to subsection 3.4(b) above, such conversion shall be deemed to have been made immediately prior to the closing of the public offering, or if applicable, at the time of the election of the holders of two-thirds of the outstanding Preferred Shares) and the person or persons entitled to receive the Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Shares on said date.

(d) Fractional Shares. In lieu of any fractional shares to which the holder of Preferred Shares would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one Common Share as determined by the Board of Directors of the Corporation.

(e) Adjustment of Conversion Rate. The Conversion Rate of the Preferred Shares shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall at any time subdivide the outstanding Common Shares, the number of Common Shares issuable upon conversion of the Preferred Shares immediately prior to such subdivision shall be proportionately increased; and in case the Corporation shall at any time combine the outstanding Common Shares, the number of Common Shares issuable upon conversion of the Preferred Shares immediately prior to such combination shall be proportionately decreased. Any such changes shall be effective at the close of business on the date of such subdivision or combination, as the case may be.

(ii) In the event the Corporation at any time or from time to time shall make or issue, or fix a record date for the determination of holders of Common Shares entitled to receive, a dividend or a distribution payable in additional Common Shares or other securities or rights convertible into or entitling the holder thereof to receive additional Common Shares (hereafter collectively referred to as "Common Share Equivalents") without payment of any consideration by such holder for such Common Share Equivalents, the additional Common Shares then issuable, and in each such event the maximum number of Common Shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) issuable, in payment of such dividend or distribution or upon conversion or exercise of such Common Share Equivalents shall be deemed to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event, the Conversion Price shall be proportionately decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date.

(iii) In case of any capital reorganization (other than in connection with a merger or other reorganization in which the Corporation is not the continuing or surviving entity) or any reclassification of the Common Shares of the Corporation, the Preferred Shares shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of Common Shares of the Corporation deliverable upon conversion of such Preferred Shares immediately prior to such reorganization or recapitalization would have been entitled upon such reorganization, or reclassification; and, in any such case, appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Preferred Shares, to the end that the provision set forth herein shall thereafter be applicable, as nearly as reasonably may be, in relation to any share of stock or other property thereafter deliverable upon the conversion.

(iv) The Corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this subsection 3.4(e) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Shares against impairment.

(f) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Shares, solely for the purpose of effecting the conversion of the Preferred Shares, the full number of Common Shares deliverable upon the conversion of all Preferred Shares from time to time outstanding. The Corporation shall from time to time (subject to obtaining necessary director and shareholder action), in accordance with the laws of the State of California, increase the authorized amount of its Common Shares if at any time the authorized number of Common Shares remaining unissued shall not be sufficient to permit the conversion of all of the Preferred Shares at the time outstanding.

(g) No Reissuance of Converted Shares. Upon conversion of all of the then outstanding Preferred Shares pursuant to this Section 3.4, such converted Preferred Shares shall not be reissued.

(h) Notices. Any notices required by the provisions of this Section 3.4 to be given to the holders of Preferred Shares shall be deemed given three (3) days after deposit in the United States mail, postage prepaid and addressed to each holder of record at its address appearing on the books of the Corporation; except that notices given to an address outside of the United States and Canada shall be deemed given when sent by facsimile transmission with a confirming copy sent by commercial express delivery service.

3.5 Protective Provisions. So long as 1,000,000 Preferred Shares are issued and outstanding, the Corporation shall not, without first obtaining the approval by vote or written consent of the holders of a majority in interest of such outstanding Preferred Shares:

(a) Amend or repeal any provision of the Corporation's Articles of Incorporation that would alter or change any of the rights, preferences, privileges or restrictions of the Preferred Shares herein provided;

(b) Increase or decrease the authorized number of Preferred Shares, or create (by reclassification or otherwise) any class or series of stock with rights, preferences or privileges superior to or on a parity with the Preferred Shares;

(c) Pay or declare any dividend to the holders of the Common Shares, the Preferred Shares or any securities junior (with respect to distributions on liquidation) to the Preferred Shares;

(d) Redeem or repurchase any Common Shares or Preferred Shares, except for repurchases of securities pursuant to agreements providing for the right of repurchase between the Corporation and its current and former employees, directors, independent contractors or consultants; or

(e) Authorize a merger or consolidation of the Corporation into or with any other corporation or corporations in which the shareholders of this Corporation shall own less

than a majority of the voting securities of the surviving corporation, the sale of substantially all the assets of Corporation or recapitalization or reorganization of the Corporation; or

(f) Liquidate or dissolve.

V

Each holder of Preferred Shares shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to distributions made by the Corporation in connection with the repurchase of Common Shares issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such right to repurchase between the Corporation and such person.

VI

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law as in effect from time to time.

VII

This Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject only to applicable limits set forth in Section 204 of the California Corporations Code.

VIII

This Corporation shall have power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of the California Corporations Code. The fact that this Corporation owns all or a portion of the shares of the company issuing a policy of insurance shall not render this Article void if any policy issued by such company is limited to the extent required by applicable California law.

C. The foregoing amendment and restatement of the Corporation's Articles of Incorporation has been duly approved by the Board of Directors.

D. The foregoing amendment and restatement of the Corporation's Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 603 and 903 of the Corporations Code. The total number of outstanding Common Shares of the Corporation is 4,540,366 and the total number of outstanding shares of Series A Preferred is 605,985. The number of shares voting in favor of the amendment equaled or exceeded the vote

required, such required vote being a majority of the outstanding Common Shares and a majority of shares of Series A Preferred.

I declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Dated: 6/21, 1999



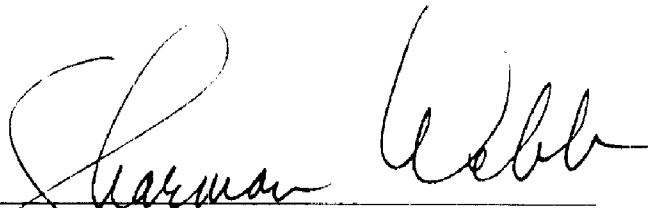
Adam Lieb, President and Secretary



CERTIFICATE OF MAILING

I CERTIFY that on October 19, 1999, I mailed (via U.S. Express Mail (#EL447122586US) SECOND AMENDED & RESTATED ARTICLES OF INCORPORATION OF OOTLEWORKS SOFTWARE, INC., regarding the mark EVITE in International Class 42, Serial No. 75/681,230 to:

Assistant Commissioner of Trademarks
U.S. Patent & Trademark Office
BOX ASSIGNMENTS
2900 Crystal Drive
Arlington, VA 22202-3513



Shaman Webb



EL447122586US

**POST OFFICE
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SE/ 200

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RECEIPT IS HEREBY ACKNOWLEDGED OF:

SECOND AMENDED & RESTATED ARTICLES OF INCORPORATION

for the mark EVITERegistration/Serial No.: 75/681,230Check in the amount of \$ 40.00
 EL 447122586US OotleWorks Software, Inc.
 31559-0006

Tran/McHugh/M. Morris

TRADEMARK
REEL: 001980 FRAME: 0191

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: OotleWorks Software, Inc.

Serial No.: 75/681,230

Filed: April 13, 1999

Mark: EVITE

REVOCATION OF POWER
OF ATTORNEY AND
APPOINTMENT OF NEW
ATTORNEY

Applicant hereby revokes all previous powers of attorney and appoints the law firm Perkins Coie LLP, 1201 Third Avenue, Suite 4800, Seattle, Washington 98101-3099, (206) 583-8888, including Heidi L. Sachs, Erika J. Starrs, Catherine H. Tran, Martin S. Goldberg, Jessica Stone Levy, Lalitha Mani and Kirsten W. Foster, members of the Bar of the State of Washington, with full power of substitution and revocation, to make alterations and amendments and to transact all business in the U.S. Patent and Trademark Office in connection with this matter.

Please address all future correspondence to Catherine H. Tran at the above-stated address.

DATED: October 13, 1999.

OOTLEWORKS SOFTWARE, INC.

By


Josh Silverman

Chief Executive Officer